

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALI HUSSIEN ISSAK,

Plaintiff,

v.

BARNES & NOBLE DOWNTOWN, *et*  
*al.*,

Defendants.

CASE NO. C17-0315-JCC

ORDER OF DISMISSAL

This matter comes before the Court on Plaintiff Ali Hussien Issak's objections (Dkt. No. 14) to the report and recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge (Dkt. No. 12), as well as Issak's subsequent amended complaint (Dkt. No. 15). For the reasons explained herein, the report and recommendation (Dkt. No. 12) and objections (Dkt. No. 14) are DISMISSED as moot, and the amended complaint (Dkt. No. 15) is DISMISSED WITH PREJUDICE for failure to state a claim upon which relief may be granted.

**I. BACKGROUND**

Plaintiff Ali Hussien Issak is a state prisoner presently confined at the King County Correctional Facility on charges of shoplifting at a Barnes & Noble store. (Dkt. No. 15 at 2.) After his arrest, Issak sued Barnes & Noble, a private company, and Joseph Wilder and Dustin Wade, private citizens employed by Barnes & Noble. (Dkt. No. 1-1 at 1; Dkt. No. 15 at 2.) He

1 asserted claims of racial profiling, defamation of character, falsified police report, unlawful  
2 imprisonment, and emotional distress under 42 U.S.C. § 1983. (Dkt. No. 1-1 at 3.)

3 Judge Tsuchida declined to serve the complaint because Issak failed to state a claim upon  
4 which relief may be granted. (Dkt. No. 7 at 1.) Because Issak was *pro se*, Judge Tsuchida granted  
5 him leave to file an amended complaint. (*Id.*) In response, Issak moved for leave to file an  
6 amended complaint under 42 U.S.C. § 1984. (Dkt. No. 8.) This request was apparently due to a  
7 scrivener's error in Judge Tsuchida's order declining service and granting leave to amend. (*See*  
8 Dkt. No. 7 at 1; Dkt. No. 8 at 1-2.)

9 Because Issak did not identify a state actor and because Issak has a state criminal trial  
10 currently pending, Judge Tsuchida recommended that this action be dismissed with prejudice for  
11 failure to state a claim. (Dkt. No. 12 at 1-2.) Issak objected, stating that he was mistaken in his  
12 initial complaint and reiterating that he meant to file his claim under § 1984. (Dkt. No. 14 at 1.)

13 However, a week later, Issak submitted an amended complaint that 1) reasserted his  
14 claims under § 1983; 2) named a state actor, Seattle Police Department Officer Kennedy  
15 Elizabeth; 3) restated his claims against Barnes & Noble, Wilder, and Wade; and 4) alleged that  
16 Defendants acted in concert. (Dkt. No. 15 at 2-4.) The Court accepted this amended pleading as  
17 the operative complaint going forward. (Dkt. No. 16 at 1.)

## 18 **II. DISCUSSION**

### 19 **A. Report and Recommendation/Objections**

20 Judge Tsuchida's recommendation and Issak's objections pertained to the earlier version  
21 of Issak's complaint, where he did not name a state actor and mistakenly endeavored to assert  
22 claims under § 1984. Given that the Court has accepted Issak's amended complaint, which  
23 attempts to address these issues, the Court **DISMISSES** the report and recommendation (Dkt.  
24 No. 12) and the objections (Dkt. No. 14) as moot and looks to Issak's amended complaint (Dkt.  
25 No. 15) to determine whether this case shall be maintained.

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1           **B.       Amended Complaint**

2           Turning to the amended complaint, the Court finds that Issak fails to state a claim upon  
3 which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). To sustain a § 1983 claim, Issak  
4 must show that (1) he suffered a violation of rights protected by the Constitution or created by  
5 federal statute and (2) the violation was proximately caused by a person acting under color of  
6 state or federal law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Moreover, the  
7 allegations in Issak’s complaint must suggest that the claim has “at least a plausible chance of  
8 success.” *In re Century Aluminum Co.*, 729 F.3d 1104, 1107 (9th Cir. 2013). Put differently, the  
9 complaint must allege “factual content that allows the court to draw the reasonable inference that  
10 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

11           Although Judge Tsuchida’s report and recommendation was mooted by the amended  
12 complaint, his analysis is still relevant and helpful to the Court’s current analysis. First, Issak’s  
13 claims remain insufficiently pleaded against the Defendants who are not state actors. Private  
14 citizens are generally not liable under § 1983 because they do not act under color of state law.  
15 *Price v. Hawaii*, 939 F.2d 702, 707–08 (9th Cir. 1991). An exception can be made if the private  
16 citizen conspires with a state actor or is jointly engaged with a state actor when undertaking a  
17 prohibited action. *Tower v. Glover*, 467 U.S. 914, 920 (1984). Issak’s amended complaint makes  
18 the conclusory statement that Defendants acted “in concert” but, beyond that, alleges no factual  
19 content allowing the Court to reasonably infer liability as to the private actors. This is not  
20 enough.

21           Furthermore, under the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37  
22 (1971), it is inappropriate for this Court to interfere with ongoing state criminal proceedings  
23 absent extraordinary circumstances. This Court must abstain when (1) state proceedings, judicial  
24 in nature, are pending; (2) the state proceedings involve important state interests; and (3) the  
25 state proceedings afford adequate opportunity to raise constitutional issues. *Id.* at 43-54. As  
26 Judge Tsuchida stated, “[t]here is no indication that Mr. Issak does not have an adequate

1 opportunity to present his constitutional claims” in his pending state trial. (Dkt. No. 12 at 3.)

2 Thus, this Court must abstain from addressing his claims.

3 **III. CONCLUSION**

4 For the foregoing reasons, the report and recommendation (Dkt. No. 12) and objections  
5 (Dkt. No. 14) are DISMISSED as moot. Issak’s amended complaint (Dkt. No. 15) fails to state a  
6 claim upon which relief can be granted. Accordingly, this action is DISMISSED WITH  
7 PREJUDICE and without leave to amend. This dismissal counts as a strike under 28 U.S.C.  
8 § 1915(g). The Court need not address the pending motion for appointment of counsel (Dkt. No.  
9 9). The Court directs the Clerk to CLOSE this case and to SEND a copy of this order to Issak  
10 and to Judge Tsuchida.

11 DATED this 23rd day of May 2017.

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15 John C. Coughenour  
16 UNITED STATES DISTRICT JUDGE  
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